

STATE OF MICHIGAN
COURT OF APPEALS

WILLIAM C. NILL, CAROLYN NILL,
CHRISTINE L. NILL, MILDRED CHISOLM,
DAVID J. HARRIS, MIDGE TULL, EUGENE C.
LOVELL, RENNA FRALEY, BRADLEY
KRESS, BRETT SANFORD, JERRY P. LEVINS,
and CHRISTINE COUSINEAU,

UNPUBLISHED
September 20, 2007

Plaintiffs/Counterdefendants-
Appellees,

v

DANIEL W. WILLIAMS, SR.,

Defendant-Appellant.

No. 269900
Macomb Circuit Court
LC No. 2006-000645-CZ

Before: Smolenski, P.J., and Whitbeck, C.J., and Kelly, J.

MEMORANDUM.

Defendant appeals as of right the trial court's order granting plaintiffs' motion for summary disposition of defendant's counterclaim pursuant to MCR 2.116(C)(8). We affirm.

This Court reviews de novo the trial court's grant of summary disposition pursuant to MCR 2.116(C)(8). *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). A motion under this subrule tests the legal sufficiency of a plaintiff's complaint on the pleadings alone. *Id.* at 119-120. In assessing a motion brought under MCR 2.116(C)(8), "[a]ll factual allegations are accepted as true and construed in a light most favorable to the nonmovant." *Id.* at 119. The motion should be granted only when the claims are "so clearly unenforceable as a matter of law that no factual development could possibly justify a right of recovery." *Wade v Dep't of Corrections*, 439 Mich 158, 163; 483 NW2d 26 (1992).

The trial court did not err in summarily dismissing defendant's counterclaims pursuant to MCR 2.116(C)(8). Most of defendant's allegations are against First State Bank, which is not a named party in this action. The only allegation against the named plaintiffs is that they defrauded defendant. However, defendant has not pleaded his fraud claim with particularity as required by MCR 2.112(B). Defendant also contends that he served "informal requests to admit" on plaintiffs and presented the question of their default on these requests to a "jury recognized under Article Seven of the Bill of Rights for the determination of the significance of such default." However, the requests to admit were not served pursuant to any Michigan Court Rule,

nor was the jury convened pursuant to any state law or recognized by any court of this state. For these reasons, defendant's counterclaim is so clearly unenforceable as a matter of law that no factual development could possibly justify a right of recovery. *Wade, supra* at 163. Summary disposition pursuant to MCR 2.116(C)(8) was proper.

Defendant also contends that the trial court violated MCR 2.504 and 2.517 by failing to issue "special findings of fact." However, these court rules are not applicable to a trial court's ruling on a motion for summary disposition under 2.116(C)(8).

Affirmed.

/s/ Michael R. Smolenski
/s/ William C. Whitbeck
/s/ Kirsten Frank Kelly